

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-08
EA-10 FRB-03 INR-07 IO-13 NEA-10 NSAE-00 USIA-06
OPIC-03 SP-02 TRSE-00 LAB-04 SIL-01 AGRE-00
OMB-01 SS-15 STR-05 NSC-05 L-03 /115 W
-----116816 211755Z /43
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FM AMEMBASSY PARIS
TO SECSTATE WASHDC 3413

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USOECD

E.O. 11652: N/A
TAGS: EINV, OECD
SUBJECT: INVISIBLES COMMITTEE: SPECIAL SESSION ON
DIRECT INVESTMENT

REF: (A) PARIS 36663; (B) PARIS 35944

1. SUMMARY: AT DECEMBER 12-13 MEETING, INVISIBLES COMMITTEE (IC) DECIDED TENTATIVELY TO SCHEDULE SPECIAL SESSION ON DIRECT INVESTMENT FOR SEPTEMBER OR OCTOBER, 1978. BY DRAWING ON SUGGESTIONS TO BE SUBMITTED BY INTERESTED MEMBERS, SECRETARIAT WAS ASKED TO PREPARE RECOMMENDATIONS TO BE CONSIDERED AT SPRING IC MEETING ON HOW A SPECIAL SESSION SHOULD BE ORGANIZED. MISSION PRESENTS SOME SUGGESTIONS. END SUMMARY

2. SECRETARIAT (BERTRAND) REPORTED TO IC RESULTS OF DISCUSSION AT RECENT MEETING OF COMMITTEE ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES (CIME) REGARDING DIRECT INVESTMENT ISSUES (PARAGRAPH 10, REFTEL B). BERTRAND INDICATED FORMAL LETTER WOULD BE SENT TO IC FROM
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OECD SECRETARY-GENERAL ASKING IC TO RESUME SPECIAL SESSIONS ON DIRECT INVESTMENT UNDER IC'S AUSPICES. (BACKGROUND NOTE: THIS REFLECTS CIME DECISION AT ITS RECENT MEETING TO HAVE IC CONTINUE ITS SPECIAL SESSIONS. CIME HAD ORIGINALLY INTENDED TO REVIEW "FACTUAL DEVELOPMENTS OF INTERNATIONAL INVESTMENT IN MEMBER COUNTRIES" AND HAD INDICATED THAT IC SPECIAL SESSIONS MIGHT THUS BECOME

SUPERFLUOUS. HOWEVER, CIME FELT ITS WORKLOAD AND PRESENT STATE OF ITS CONSIDERATION OF NATIONAL TREATMENT PRACTICES WOULD NOT ALLOW IT TO HOLD, IN THE NEAR FUTURE, A MEETING ON DIRECT INVESTMENT ISSUES WITH AS MUCH DETAILED CONTENT AS DIRECT INVESTMENT SPECIAL SESSIONS CONDUCTED BY IC UNDER CAPITAL MOVEMENTS CODE -- CMC.)

3. BRIEF DISCUSSION AMONG IC MEMBERS CENTERED ON HOW SPECIAL SESSION SHOULD BE ORGANIZED. THERE WAS SOME FEELING THAT, WHILE INVENTORY OF COUNTRY LAWS AND PRACTICES REGARDING INWARD DIRECT INVESTMENT (SIMILAR TO ONE FOR NATIONAL TREATMENT, REFTEL B) COULD USEFULLY BE UPDATED, INVENTORY WOULD NOT PROVIDE PRODUCTIVE BASE FOR LAUNCHING DISCUSSION AT SPECIAL SESSION. ACTING CHAIRMAN (SWISS MEMBER) SUGGESTED ORGANIZING SPECIAL SESSION AROUND SPECIFIC CASES IN WHICH INVESTMENT REQUESTS BY FOREIGN ENTERPRISES HAD BEEN REFUSED. UK MEMBER, WHILE PROFESSING TO SEE MERIT IN SWISS SUGGESTION, CITED NUMEROUS PITFALLS INVOLVED IN USING INDIVIDUAL CASES. HE QUESTIONED HOW CASES WOULD BE FOUND -- BY COUNTRIES OR FROM NEWSPAPER CLIPPINGS (A BAD PRACTICE IN HIS EYES), OR BY OTHER MEANS -- AND HOW THEY WOULD BE DISCUSSED. U.S. MEMBER EXPRESSED VIEW THAT GOAL OF SPECIAL SESSION, HOWEVER ORGANIZED, WAS TO INCREASE TRANSPARENCY OF GOVERNMENT PRACTICES. SECRETARIAT WAS ASKED TO MAKE RECOMMENDATIONS TO IC (AT EITHER FEBRUARY OR APRIL MEETING) ON LIMITED OFFICIAL USE

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BEST WAY TO ORGANIZE THE SPECIAL SESSION, TENTATIVELY SCHEDULED FOR FALL 1978. INTERESTED MEMBERS WERE ASKED TO PROVIDE SECRETARIAT WITH SUGGESTIONS WHICH WOULD HELP IN DRAFTING SECRETARIAT'S PAPER.

4. MISSION BELIEVES SPECIAL SESSION ON DIRECT INVESTMENT COULD BE USED AS VEHICLE FOR ADVANCING USG GOALS IN FOREIGN DIRECT INVESTMENT AREA AND CONTRIBUTE TO ONGOING WORK IN CIME. CONSEQUENTLY, WE SHOULD TRY TO INFLUENCE THE MANDATE OF THE SESSION AND HOW IT WILL BE ORGANIZED SO AS TO MAXIMIZE ITS USEFULNESS, WITHIN CONSTRAINT THAT IC SPECIAL SESSION WOULD DEAL ONLY WITH DIRECT INVESTMENT ISSUES COVERED BY THE CMC AND NOT ALL ISSUES COVERED BY 1976 MINISTERIAL DECISIONS ON NATIONAL TREATMENT AND INCENTIVES AND DISINCENTIVES.

5. PRELIMINARY VIEWS OF MISSION ARE AS FOLLOWS. MEETING SHOULD BE BASED ON INDIVIDUAL CASES IN ORDER TO ENSURE SPECIFICITY OF DISCUSSION, BUT ORGANIZED SO AS TO ILLUS-

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TRATE GENERAL PRACTICES OF A COUNTRY RATHER THAN TO
INFLUENCE PENDING CASES. ONE POSSIBILITY MIGHT BE TWO-
STAGE PROCESS WHICH LOOKED FIRST AT PAST CASES AND THEN,
SECONDARILY, PENDING CASES. AIM WOULD BE TO COMPLETE A
STANDARD SCHEMATIC DIAGRAM FOR EACH COUNTRY GIVING GOOD
PICTURE OF ITS PRACTICES. QUESTIONS UNDERLYING SUCH A
DIAGRAM SHOULD BE SUSCEPTIBLE TO SHORT RESPONSES (I.E.,
YES/NO, STATISTICS) AND MIGHT INCLUDE INTER ALIA:

(A) DOES COUNTRY'S RESERVATION (OR ABSENCE OF RESERVA-
TION) ON INWARD DIRECT INVESTMENT IN CMC ACCURATELY DES-
CRIBE COUNTRY'S PRACTICES?

(B) WHAT ARE DOMESTIC LAWS/REGULATIONS ON WHICH SCREEN-
ING IS BASED (LEEWAY FOR BUREAUCRATIC JUDGEMENT, WAIVERS,
POSSIBILITY OF APPEAL)?

(C) HAVE THERE BEEN REFUSALS OF TRANSACTIONS AND TRANS-
FERS UNDER REMARKS (I) OR (II) TO DIRECT INVESTMENT ITEM
IN CMC?

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(D) WHAT IS PRINCIPAL MOTIVATION OF REGULATIONS (E.G., PREVENT FOREIGN CONTROL, ALLOCATE DOMESTIC RESOURCES)?

(E) WHAT ARE CRITERIA, IF ANY, WHICH PROPOSED TRANSACTIONS MUST MEET?

(F) WHAT EXPLICIT INCENTIVES/DISINCENTIVES EXIST?

(G) WHAT IMPLICIT INCENTIVES/DISINCENTIVES EXIST (INCLUDING ANTITRUST INVESTIGATIONS)?

(H) ELABORATION OF ADMINISTRATIVE PRACTICES AND STATISTICAL DETAIL:

-- NUMBER OF APPLICATIONS PROCESSED ANNUALLY, AVERAGE SIZE.

-- PROPORTION OF TAKEOVERS VS. "GREENFIELD" APPLICATIONS (OR EXPANSION OF EXISTING INVESTMENT IF APPLICABLE).

-- APPROVALS REQUIRED/FINAL DECISION-MAKER.

-- AVERAGE TIME REQUIRED FOR DECISION.

-- PERCENTAGE APPROVAL FOR EACH OF ABOVE CATEGORIES.

IN PAST SESSIONS, COUNTRIES HAVE BEEN RELUCTANT TO RAISE SPECIFIC CASES. SECRETARIAT SHOULD BE ASKED TO PREPARE INITIAL LISTS OF INDIVIDUAL CASES WHICH IT BELIEVES MIGHT BEST SERVE TO ILLUSTRATE PRACTICES; HOWEVER, SESSION WOULD FOCUS ON THOSE WHICH ANY COUNTRY HAD IDENTIFIED AS LIMITED OFFICIAL USE

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BEING PARTICULARLY RELEVANT. COUNTRIES SHOULD NEVERTHELESS BE FREE TO RAISE CASES ON THEIR OWN INITIATIVE (AS SESSION APPROACHES WASHINGTON MAY WISH TO CANVASS U.S. EMBASSIES IN OECD COUNTRIES WHICH ARE MAJOR RECIPIENTS OF U.S. INVESTMENT, AND ALSO U.S. BUSINESS COMMUNITY, TO IDENTIFY ANY SUCH CASES). FINALLY, OTHER COUNTRIES SHOULD BE URGED TO SEND REPRESENTATIVES WHO ARE ENGAGED ON DAY-TO-DAY BASIS IN DECISIONS ON SPECIFIC CASES.

6. ACTION REQUESTED: WE WOULD APPRECIATE WASHINGTON'S REACTION TO MISSION'S VIEWS AND OTHER SUGGESTIONS ON HOW SPECIAL SESSION ON DIRECT INVESTMENT MIGHT BEST BE ORGANIZED. PREFERABLY GUIDANCE SHOULD BE IN FORM WHICH COULD BE SUBMITTED TO SECRETARIAT FOR ITS CONSIDERATION IN PREPARING RECOMMENDATIONS TO IC. (ON OCCASION OF

RECENT CIME MEETING, MISSION DISTRIBUTED TO U.S. DELS
AN INFORMAL MEMO DATED NOVEMBER 30 ON SUBJECT OF SPECIAL
SESSION WHICH MAY BE OF USE IN CONSIDERING THIS ISSUE --
COPIES ALSO SENT GELBARD /STATE/ AND GRIFFIN /TREASURY/.)
KATZ

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Message Attributes

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Disposition Date: 22 May 2009
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